S.B.CIVIL WRIT PETITION NO.3333/1992

Kanchan
v.
State & Ors.

Date of Order :: 13th February, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Tribhuvan Gupta, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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A proclamation for sale was issued by Assistant Mining Engineer (Recovery) for immovable property of Shri Sewa husband of the petitioner for default in making payment of sum of Rs.4,35,592/- against illegal excavation of mineral said to be made. Shri Sewa on knowing about the proclamation of sale referred above dated 23.2.1985 approached to the Additional Director, Department of Mines and Geology, Udaipur and submitted a representation dated 16.3.1985 stating therein that no illegal mining was made by him and as such the demand made itself is illegal. Shri Sewa also made a request to supply him a copy of the order determining the demand, a copy of the inspection report and a copy of the order on basis of which proclamation of sale of immovable property was made. The documents aforesaid were not supplied to him, therefore, he preferred a revision petition before Board of Revenue for Rajasthan, Ajmer under Section 84 of the Rajasthan Land Revenue Act, 1956. During

pendency of revision petition Shri Sewa died on 6.7.1989, therefore, the present petitioner was substituted as petitioner in the revision petition referred above. The Board of Revenue by its order dated 31.10.1991 dismissed the revision petition being not competent. After dismissal of revision petition the Assistant Mining Engineer (Recovery), Bhilwara on 4.7.1992 again made a proclamation for sale of immovable property for making default in payment of demand made in a tune of Rs.4,35,592/-.

By the instant petition for writ the petitioner has given challenge to the demand made by respondent Mining Department as well as proclamation for sale declared against default said to be made in satisfying the demand of Rs.4,35,592/-.

It is contended by the petitioner that no inspection was made by the respondents before determining the demand and imposing penalty for alleged unauthorised mineral excavation. The petitioner in petition for writ has denied removal or dispatch of mineral from her khatedari land by her husband or by herself.

The respondents in reply to the writ petition stated that an inspection was made by the competent officers of the department on 5.2.1984 and then a case was prepared under Rule 48 of the Rajasthan Mines and

Mineral Concession Rules, 1977. On basis of aforesaid spot inspection demand was determined but the petitioner's husband and the petitioner failed to satisfy the same, therefore, a proclamation for sale of immovable property was issued by the Assistant Mining Engineer (Recovery) in accordance with law.

This Court by order dated 7.2.2005 directed the respondents to place on record the inspection report said to be prepared on 5.2.1984 and also the entire record of the proceedings on basis of which demand of Rs.4,35,592/- was made. Despite sufficient opportunity no such record is produced by the respondents.

Learned Deputy Government Advocate Shri B.L.Tiwari has shown to the Court, a communication dated 15.2.2005 from Mining Engineer, Bijolia to Mining Engineer (Writs), Jodhpur stating therein that the record called for is not traceable. The writ petition, therefore, is heard without the record called for.

The petitioner in the writ petition in quite unambiguous terms stated that no mineral was excavated by her or by her husband. It is also stated in the petition that no inquiry was made by the respondents before making demand in a tune of Rs.4,35,592/-. It is asserted by counsel for the petitioner that entire

proceedings for effecting recovery against the alleged unauthorised mining was made by the respondents in violation of principles of natural justice. As stated above, though the respondents have given reference of the spot inspection made on 5.2.1984, but no such report or record relevant thereto is produced before the Court. The respondents have also not placed on record the order imposing penalty upon the petitioner for alleged unauthorised mining.

It is well settled that an order imposing penalty is a quasi judicial order and it is always required to be passed by giving an opportunity of hearing to the person effected. In the instant case the respondents utterly failed to satisfy the Court that whether before imposing penalty an opportunity of hearing was given to husband of the petitioner. The respondents also failed to satisfy the Court with regard to availability of the material on basis of which they initiated proceedings against husband of the petitioner for unauthorised mining. The proclamation of sale, therefore, lacks foundation as the demand itself appears to be made without adhering the principles of natural justice.

Accordingly, this petition for writ is allowed. The demand made by the respondents in a tune of Rs.4,35,592/- from the petitioner is declared illegal and the same is quashed. The consequential

proclamation for sale, therefore, is also declared illegal and same is quashed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.